CONTROL AND SUPERVISION OF TRUST COMPANIES

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In discussing the general question of the control and supervision of the trust companies in the country by the respective States in which they are located, I take it for granted that there can be no serious division of opinion. It is the general impression and desire among thinking men, who have given the subject consideration, that adequate and thorough control of institutions of this kind by the State is essential alike to their own legitimate success, and to the safety of the public. And especially is this true in view of the great development of our country's resources, the vast extension of its influence, the undreamed of expansion of its domain and the wonderful growth and combination of business enterprises all over the country which the last ten years of our history have witnessed. Not until recent years has there been a State supervision of these institutions in any comprehensive sense, or by general laws regulating their formation and control.

Trust companies are private corporations created by the State. They are privileged to take charge of private estates, and to act as executor, administrator and guardian—relations which imply the most sacred trusts. Their powers and privileges in other directions are varied and extraordinary, and altogether their character and purposes are of such a nature that there should be the closest and most efficient State control and supervision over them that can be devised, to the end that, so far as human foresight can prevent, there shall be no betrayal of the interests committed to their care, nor failure by them to meet promptly and faithfully their engagements. But this judgment is not intended to imply that an administrative bureau should undertake a regular examination of each specific trust, nor do I believe that experience has shown this to be necessary. If it be made certain that the affairs of a corporation of this class are being managed in general with prudence and wise judgment, that its investments are of a character carrying the

guaranty of a reasonable income return and of safety—in a word, if general examinations show a company solvent, strong and prosperous, and conducted in accordance with the law—the question of the proper discharge of each specific trust can be left without risk to the company and to the determination of the Courts at the final accounting, when, if any default or wrong be shown, the company being responsible and abundantly able to pay, correction or reparation may easily be enforced.

All trust companies organized in the State of New York prior to 1887 were formed under special charters granted by the Legislature. The first such charter granted was to the Farmers' Fire Insurance and Loan Company, now the Farmers' Loan and Trust Company of New York City, one of the largest and most conservative companies in my State. It was chartered in 1822, and was given the power to make loans upon the security of bonds and mortgages, or upon conveyance of improved farms, houses, manufactories, or other buildings, or on any other real estate, or on the security of corporate stocks. It was also empowered to carry on the business of fire and life insurance. It was prohibited, however, from taking deposits, or from discounting promissory notes, bonds, due bills, drafts or bills of exchange; nor was it allowed any banking privileges or business whatever. The same year the charter was amended to confer upon the company the power to act as trustee.

Other charters were granted from time to time, all containing special privileges to a greater or less extent, such as insurance, title guarantee and mortgage features.

Many of the savings banks' charters, which until recent years were also the creatures of special legislation, carried trust company powers. Some trust companies were required to report to the Comptroller of the State, and others to the Supreme Court. The powers and privileges granted to one differed perhaps radically from those granted to another. Some of the charters were extremely liberal in their provisions, and included powers which would be regarded as inconsistent with the proper functions and purposes of these institutions as they have developed and as they exist to-day. There was no supervision, except of a superficial and perfunctory character. There was no comprehensive system of reports, and the whole matter was in a chaotic condition. Notwithstanding all this, and though

there have been instances of voluntary liquidation and of merger and consolidation, there have been but two failures of trust companies in the history of the State where the depositors and general creditors were not paid in full. One of these failures was that of the National Trust Company, which occurred in 1877, and the other The American Loan and Trust Company, occurring in 1891.

In 1887 a general act was passed in the State of New York regulating the formation of trust companies and defining their powers and privileges. This act provided that any number of natural persons (not less than thirteen), three-fourths of whom should be residents of the State, might associate themselves together for the purpose of organizing a trust company; that in no material respect should such company's name be similar to the name of any other trust company organized and doing business in the State; that the certificate should state the place where the business was to be transacted, the amount of the capital stock and the number of shares into which the same should be divided, and the name, residence and post office address of each member of the company; the term of the company's existence, which should not exceed fifty years; and the declaration that each member of the association would accept the responsibilities and faithfully discharge the duties of a trustee if elected to act as such. It provided that the certificate should be executed in duplicate, one of which should be filed in the office of the Clerk of the county wherein the trust company was to be located, and the other in the office of the Superintendent of Banks. It also provided for the publication for four weeks of a notice of intention to organize. It defined the powers and duties of trustees. It provided that the capital stock must be at least five hundred thousand dollars, except that trust companies with a capital of not less than two hundred thousand dollars might be organized in cities the population of which did not exceed one hundred thousand inhabitants.

It also provided that the capital of the company should be invested in bonds and mortgages on unincumbered real estate in the State of New York, worth at least double the amount loaned thereon, or in stocks of the State of New York, or of the United States, or in the stocks or bonds of incorporated cities or counties of the State of New York duly authorized to be issued. It provided further that all trust companies organized under the act should be

corporations possessed of the powers and functions of corporations generally, and as such should have power:

To make contracts;

To sue and be sued, complain and defend, in any court as fully as natural persons;

To act as fiscal or transfer agent of any state, municipality, body politic or corporation; and in such capacity to receive and disburse money, and transfer, register and countersign certificates of stock, bonds or other evidence of indebtedness;

To receive deposits of trust moneys, securities and other personal property from any person or corporation, and to loan money on real or personal securities;

To lease, purchase, hold and convey any and all real estate necessary in the transaction of its business, or which the purposes of the corporation may require, or which it may acquire in the satisfaction, or in partial satisfaction, of debts due the corporation under sales, judgments or mortgages;

To act as trustee under any mortgage or bond issued by any municipality, body politic or corporation, or accept and execute any municipal or corporate trust not inconsistent with the laws of the State;

To accept trusts from and execute trusts for married women, in respect to their separate property, and to be their agent in the management of such property, and to transact any business in relation thereto;

To act under the order or appointment of any court of record as guardian, receiver or trustee of the estate of any minor the annual income of which is not less than one hundred dollars, and as depositary of any moneys paid into court;

To manage estates, collect rents, etc.;

To take, accept and execute any and all such trusts and powers of whatever nature or description as may be conferred upon or intrusted or committed to it by any person or persons, or any body politic, corporation or other authority;

To purchase, invest in and sell stocks, bills of exchange, bonds and mortgages, and other securities, not including, however, the power to issue bills to circulate as money;

To be appointed and to accept the appointment as executor or trustee under the last will and testament, or as administrator with or without the will annexed, of the estate of any deceased person, and to be appointed and to act as the committee of the estates of lunatics, idiots, persons of unsound mind and habitual drunkards.

The act also provided that no loan should be made by any trust company, directly or indirectly, to any trustee or officer thereof.

It was also made the duty of the Superintendent of Banks to ascertain from the best sources of information at his command whether the general fitness for the discharge of the duties appertaining to such a trust of the persons named in the certificate was such as to command the confidence of the community in which such trust

company was proposed to be located, and whether the public convenience and advantage would be promoted by such establishment. It was left entirely to the discretion of the Superintendent, based upon the result of these inquiries, to authorize, or not to authorize, the formation of the company. These are the principal features of the law of 1887.

In 1892 a general and comprehensive revision of the Banking Laws was made and embodied in one act, now known as the "Banking Law," which relates to all corporations under the supervision of the Banking Department, including State Banks of Discount, Trust Companies, Savings Banks, Building and Loan Associations and Safe Deposit Companies.

There have been some amendments to the general law of 1887, but, with one or two exceptions, these amendments have been of minor importance, and the law to-day is substantially that passed in 1887, the principal features of which have been summarized.

One of the amendments in the revision of 1892 provided that every trust company incorporated by special law should possess the powers of trust companies incorporated under the general law, and be subject to such provisions of the general law as are not inconsistent with the special laws relating to such specially chartered companies:

Another provided that companies might be organized with a capital of $150,000 in cities containing more than twenty-five thousand and less than one hundred thousand inhabitants, and with a capital of $100,000 in a city or town containing not more than twenty-five thousand inhabitants; and

Another allows a director or officer to borrow a sum not exceeding ten per cent. of the capital stock upon the approval of the Board of Directors.

The law also provides that the capital of every trust company shall be invested in bonds and mortgages on unincumbered real property in this State to an amount not exceeding sixty per centum of the value thereof, or in the stocks or bonds of the United States, or of the State of New York, or of any county or incorporated city of the State of New York duly authorized by law to be issued.

It compels the Superintendent to examine, or cause to be examined, every trust company in the State at least once in each year,

and empowers him to make an examination also, whenever, in his judgment, it may be necessary or expedient to do so.

It requires each company to report to the Banking Department its condition on the morning of the first days of January and July, which report must be in such form, and contain such particulars as the Superintendent may designate or require.

It is also provided that, if it should appear to the Superintendent of Banks that any trust company has violated its charter or any law of the State, or is conducting its business in an unsafe or unauthorized manner, he shall, by an order under his hand and official seal, addressed to the company, direct the discontinuance of such illegal or unsafe practices; and, if it shall appear to the Superintendent that it is unsafe or inexpedient for the company to continue business, he shall communicate the fact to the Attorney-General, who shall thereupon institute such proceedings against the company as are authorized in the case of insolvent corporations, or such other proceedings as the nature of the case may require.

There are in New York State to-day seventy-nine trust companies, twenty-five of which were organized under special charters, and the others under the general law, but in practice all exercise substantially the same powers and are engaged in the same classes of business, and are now controlled by substantially the same laws.

A few statistics concerning them may be of interest, and perhaps important in considering what should be done, if anything, in the way of enlarging or extending State supervision and control. There were eighty-one trust companies in the State on the first day of January, 1904, forty-eight of which were located in the city of New York:

The combined capital on the first day of January, 1904, was	$63,750,000
Their surplus and undivided profits on book values	141,504,561
and on market values	143,087,880
Amount due depositors, including the amounts due other trust companies, savings banks and banks	807,182,140
Their combined resources amounted to	1,039,735,828
They had—	
Bonds and mortgages	59,534,679
Bond and stock investments	225,386,955
Loaned on collateral	510,928,626
Bills purchased	56,714,963

Real estate	14,376,379
Cash on deposit	125,392,247
Cash in vaults	26,894,136
and overdrafts amounting to but	41,123

Their net earnings for the year 1903 were $17,383,608, or $8,333,756 in excess of dividend distributions.

The New York law, though excellent in character and comprehensive in scope, is not perfect. In a report to the Legislature in January, 1904, the writer recommended that trust companies located in the city of New York be compelled to keep legal reserves of fifteen per cent., one-third in cash and the balance on deposit. For the balance of the State ten per cent. was suggested, one-half of which should be in cash. This proportion seems sufficient when we take into consideration the fact that a trust company is obliged to invest its capital in the manner heretofore pointed out.

The Clearing House has attempted to regulate this question by an amendment to its constitution, prohibiting Clearing House privileges to trust companies unless they keep a reserve in accordance with the Clearing House requirements. The Clearing House, however, is powerless to compel the observance of its rule. The trust companies simply withdraw from the privileges of this institution if they do not wish to observe its regulations. In any event, but few of them ever availed themselves of these privileges.

It is, of course, proper, and in accordance with the well established policy of the law, that trust companies should be the custodians of trust funds and moneys not daily employed in the business of the country; and I am not aware that any state prohibits a trust company from receiving on deposit the moneys employed in the daily and active business of merchants, manufacturers and other business men. It is doubtful, however, if this was the original intention of the framers of the laws, either special or general, under which trust companies are organized.

I may seem to have given too much attention to the banking features of my subject at the expense of the trust features.

It is exceedingly difficult sometimes to distinguish between deposits which are genuinely trust deposits and those of a purely banking character. One great and conservative trust company in the city of New York reports all of its deposits as trust deposits,

and yet the only difference between these and ordinary deposits is that they are represented by certificates containing the provision that they will be paid upon five days' notice. But commercial deposits form so large and important a feature in the transactions of all the companies that control and supervision in this direction necessarily covers, if not the details, at least the general character of transactions, and determines whether a company deserves confidence, or needs to be curbed and corrected in its operations.

On January 1st, 1904, the trust companies in the State of New York reported trust deposits to the amount of $215,929,174, all but about $7,000,000 of which are in trust companies in Greater New York.

The trust companies of the State had at the same time general deposits amounting to $591,252,966, included in which are $35,000,000 belonging to other trust companies, $35,000,000 belonging to savings banks, and $20,000,000 due banks, bankers and brokers.

If, therefore, trust companies are allowed to take on deposit active business accounts, they should be compelled to keep a safety fund in the way of a reserve against deposits of this kind, as Banks of Deposit and Discount are obliged to do.

In the report mentioned it was also recommended that trust companies be prohibited from engaging in underwriting schemes:

"Trust Companies should be prohibited by law from engaging in underwriting schemes. In my opinion it is sufficient for them to be allowed to invest in the securities of private corporations only after these securities have had inception and their value tested upon the market. Those who underwrite enter into their engagements, of course, upon the expectation of being able to market the securities for which they subscribe at a greater price than that which they promise to pay. This is not investment; it is speculation, in which trust companies ought not to be allowed to use the money of their depositors.

"The experiences in New York within a year or two, where bonds thus put out have had very great depreciation, regardless of the strength of their support, have occasioned many regrets and sore memories. I hold, therefore, that it is not enough that the door be closed effectually against excessive purchases of stocks of private corporations, but that it should be shut also against a too close and dangerously large identification in any manner of the fortunes of a trust company with experimental and hazardous schemes for the financing and development of properties, which, even if eventually successful, may have before them long years of uncertainty and difficulties. The public's deposits deserve to be guarded against such reckless employment, and the statute should be so changed

as at least to impose a limit beyond which operations along such lines can not be lawfully carried."

Since the report was written no grounds have arisen for a change in the views there expressed. In fact, further reflection but confirms the opinion that Trust Companies should be absolutely prohibited by law, not only from investing on their own account in the untried and "undigested" securities which, especially of late, have been so prevalent in the markets, but also from so identifying themselves with highly speculative ventures as to create the impression with the public that the trust companies are sponsors or guarantors for such enterprises. The good name of a financial institution should be a real and substantial asset, and good faith should be always a characteristic of its management, so that its indorsement, even if implied only, may be accepted with absolute confidence and trust. A trust company cannot afford, nor should it be permitted under the law, to lend its credit or give its moral support to enterprises which, through reckless violation of sound principles, may involve scandals and disaster.

I fear there is a popular impression that it is an ordinary and frequent occurrence for trust companies to engage in enterprises of this kind, and in a general way to enter the field of speculation. This, so far at least as New York State is concerned, I can positively refute. Two or three unfortunate instances of the kind, to which great publicity has been given, have created the impression that trust companies, especially in the city of New York, are in a general way engaged in promoting schemes and in underwriting the securities of corporations and combinations unworthy of public confidence.

Many people rush to the conclusion that, because one company has committed flagrant violations of the law and engaged in schemes of the kind to which I have referred, therefore all must be to a greater or less extent involved in the same unwarranted and unlawful practices. This was well illustrated in the story of the failure of the United States Shipbuilding Company, and of the connection of the Trust Company of the Republic with the financing of that corporation's affairs. This was a case where liabilities were incurred which not only jeopardized the solvency of the trust company, but flaggrantly transgressed the law. Upon the first intimation that the trust company had made unusual commitments a special inquiry

was instituted by the Banking Department, and I confess that I was amazed at the extent to which the president of this company, either with the passive acquiescence of the directors, or without their knowledge, had committed his company. Through the power given me by the law I was enabled to save all depositors from loss, and the company from dissolution, by using its entire surplus and one-half of its capital stock of one million dollars. The publicity of this affair did more to discredit the trust companies in the city of New York, and especially some of the newer organizations, than anything that has happened for years. It has, at the same time, furnished a salutary lesson and warning.

But let me emphasize that I must not be understood as asserting that there is no opportunity for improvement in the general administration of these companies' affairs, though I do wish to dispel the impression that they are as a class engaged in dangerous and speculative enterprises, or are being conducted in a reckless and unsafe manner. Their stability and soundness have been too well tested during the long years of their operation in New York State to require other refutation of this general insinuation, and instances of unlawful procedure or reckless investment by them are too infrequent to warrant any general distrust of their stability. If the laws under which they are organized are imperfect or inadequate, they can be amended. If the powers of the Superintendent are insufficient, they can be increased. If the Superintendent is incompetent or neglectful of duty, he can be replaced.

There is no general law in the State of Massachusetts for the organization of trust companies. There is, however, a bill now before the Legislature of that State for that purpose, drawn largely upon the plan of the New York law. A bill has also been introduced compelling trust companies to keep reserves, and regulating the amount. There is a general law of the State (Chapter 116 of the revised law) which provides that domestic trust companies incorporated subsequent to the 28th day of May, 1888, shall be subject to its provisions, and that any such corporations chartered prior to that date which have adopted, or which shall adopt, according to law, the provisions of that chapter, or any section thereof, or the corresponding provisions of earlier laws, shall be subject to the provisions so adopted.

Michigan has a very comprehensive general law for the organization and control of trust companies. Organization under it, however, is unrestricted.

Maine has no general law for organization or control. All trust companies in that State are organized by special legislation. Before 1893 these special charters contained various provisions such as might suggest themselves to the parties seeking them. Since that time, however, they have been modelled after a general form regulating their powers, and providing for State control and supervision to a limited extent.

In Illinois trust companies are quite generally organized under the banking act, which confers upon State banks the power to accept and execute trusts. Before assuming the exercise of such powers, however, they must deposit certain securities with the State Auditor.

Connecticut has no general law whereby any bank, savings bank, or trust company can organize or do business. Each derives its powers from special legislation. It has, however, a general law governing State Banks and Trust Companies, but the power of supervision is inadequate.

Pennsylvania does not seem to have any general law for the organization of trust companies. They are organized under the General Corporation Act of 1874, and their powers are defined in various supplements to that act, passed in 1885, 1889 and 1895. It, however, has a general law very much like that of New York providing for supervision and defining the powers of the Commissioner of Banking.

New Jersey has a general act under which trust companies may be organized, and defining their powers. This act is also very similar in many features to the New York law.

New Hampshire and Vermont have no general laws upon the subject so far as uniform method of organization is concerned. In Vermont many of the trust companies have the words "savings bank" in their titles, although they have no savings bank powers.

Ohio and Minnesota both have general laws for the organization of trust companies, and defining their powers and privileges and providing for their supervision.

The banking law of Wisconsin makes no provision whatever for the organization, supervision or control of trust companies. So I

assume that the institutions of this kind in that State, if any exist, are the creatures of special legislation.

It will be seen that each State is a law unto itself in the matter, and that the variety of powers, privileges and purposes of trust companies in the country is only limited by the conditions and necessities existing in different localities and the conceptions of human ingenuity. The Federal government has not the power to regulate or control in matters of this kind. This power must be left to the respective States, where I believe it can safely remain, though it is to be recognized that the question ought to have the best and most careful consideration that financiers and publicists can give to it. The one tendency most to be feared regarding it is the too great readiness of some legislatures to grant to trust companies charters containing almost unlimited powers. The possession of power carries the temptation to use it, and if a corporation has the legal right to exploit a railroad or a mine in China or Timbuctoo, or to finance speculative schemes wherever it may choose, it is almost certain that some restless, not to say reckless, mind will be found in its directorate who will not be content while such power stands unemployed. The way of safety is, therefore, for legislatures to deny applications for trust company charters that permit any extraordinary latitude of operations out of which disaster might result. The ideal system would undoubtedly be a conformation ultimately of all charters of institutions of this class to some one general plan based upon conservatism and safety. This is probably not as yet practicable—perhaps not even advisable at present; for, while in my opinion it would be well if substantially uniform laws, liberal enough to include all desirable features and privileges, and yet sufficiently restrictive to prevent unsafe practices, could be enacted by all the States, diverse conditions existing in the different States might make it necessary to add to, or take from, general privileges, or it may be require more or less restrictive features in some localities which would not be salutary in others.

Experience is a great teacher, and the defects in our laws relating to trust companies, the mistake of granting of savings bank, banking, insurance, title guarantee, safe deposit and trust company privileges all in one charter, the granting of too generous privileges, or the enactment of excessive restrictions, will, in my opinion, all

be righted and regulated eventually, as experience and considerations of public safety, backed by an enlightened public sentiment, shall demand. Much has already been accomplished; evolution in this field having been going on for years, and still continuing. Especially is this true of the great financial centers of the East. I do not believe that there was ever a time when the general condition of the trust companies of New York was better than at the present. It must be remembered that they have more than doubled in number during the last six years, as they have also doubled in deposits and general resources. The marked depreciation in values and depression in business which have taken place in the last two years have been a great strain upon all financial institutions, and when we remember that not a trust company in the State of New York has become insolvent through it all, or failed to pay all debts upon demand, there would seem to be slight cause for apprehension regarding their safety, or room for criticism of their management.

I speak of my own State freely because I am familiar with conditions there, and can speak from knowledge. There is no reason why results should be different in other States where conditions and laws are substantially the same. I do not hesitate to state that the practices of some companies have met with just condemnation. Occasionally I have had reason to deplore and criticise the general condition and the policy of some companies under my supervision, but anything of a nature serious enough to imply failure or disaster, or to produce an unsafe or unsound condition, is exceedingly rare. Unsafe or even unlawful practices cannot be eliminated wholly in trust companies or other financial institutions so long as human nature remains fallible.

Aside from the conservative management which these institutions enjoy, I believe that the laws of the State of New York have done more to conserve their welfare than any other thing. Your president (and I hope I am not violating any confidence) in a letter to me used the expression "unregulated developments in matter of trust companies." In some States organization is unrestricted in the sense that no officer has the power to prohibit, provided the procedure is in accord with the statute, but in New York and in some of the other States a trust company can not be organized without the consent of the Superintendent of Banks, based, as has

been suggested, upon the fitness of the proposed incorporators and the advantage and convenience of the public; and, while many trust companies have been organized in the State of New York in the last six or eight years, more applications have been refused than have been granted.

Since the business of the country became less active, and business incorporations and combinations less frequent, the desire for trust company organization has proportionately abated. I am unqualifiedly in favor of State control, adequate and close control, not only of trust companies, but of all institutions of a financial nature which invite the public confidence and deal with the people's money. This control should be sufficiently comprehensive to regulate the organization, provide ample supervision, and restrict investment, in a way that will conserve, in so far as human ingenuity can provide, the interests of the public. Investment by such institutions, in untried securities, promotion of questionable enterprises, speculative underwriting of stocks or bonds, and all other acts of a nature involving dangerous investment or promotion of individual interests, should not only be prohibited, but made a penal offense if indulged in contrary to law. It would be well if the name "Trust Company" could have a uniform meaning throughout the land, always implying strict compliance with wise laws, adequate State supervision and control and conservative and safe management.